

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KAYLEEN D. MARLETTE-COLSON

Plaintiff,

vs.

CIVIL ACTION NO. 04 CV 74163 DT

JO ANNE B BARNHART,
COMMISSIONER OF SOCIAL
SECURITY

DISTRICT JUDGE AVERN COHN

MAGISTRATE JUDGE VIRGINIA M. MORGAN

Defendant.

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REPORT AND RECOMMENDATION

This matter is before the court on defendant Commissioner's motion for remand.

Pursuant to sentence 6 of section 205 (g) and 1631 (c)(3) of the Social Security Act, 42 U.S.C. § 405(g), and 1383 (c) (3) "[t]he court may, on motion of the Commissioner made for good cause shown before he files his answer, remand the case to the Commissioner for further action by the Commissioner"

The Commissioner moves to remand this matter because the administrative record cannot be prepared at this time. The agency has been unable to locate the claim file and hearing tape. Plaintiff did not file a response to the motion.

Accordingly, the court recommends that defendant's Motion for Remand be **GRANTED** and that this matter be remanded to defendant Commissioner for further proceedings. The parties to this action may file objections to this Report and Recommendation within ten (10) days of service of a copy hereof, as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. Thomas v.

Arn, 474 U.S. 140 (1985); Howard v. Secretary of HHS, 932 F.2d 505, 508 (6th Cir. 1991); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). A party must timely raise all objections it may have to the Report and Recommendation in order to preserve those objections for further review. Willis v. Secretary of HHS, 931 F.2d 390, 401 (6th Cir. 1991); Smith v. Detroit Fed'n of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987) (“making some objections but failing to raise others will not preserve all the objections a party may have”). Pursuant to E.D. Mich. LR 72.1(d)(2), a party must serve the objections upon the magistrate judge.

Within ten (10) days of service of a party's timely filed objections, the opposing party may file a response. The response shall be no more than 20 pages in length, unless by motion and order the page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/Virginia M. Morgan
VIRGINIA M. MORGAN
UNITED STATES MAGISTRATE JUDGE

Dated: 3/17/05

CERTIFICATE OF MAILING

I hereby certify that a copy of this order was served upon Elizabeth Larin, Lewis M. Seward, and the Social Security Administrator on the date indicated above by ordinary mail and/or email

s/Jennifer Hernandez
Deputy Clerk 313-234-5210

